

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Roderick Jenkins,

CV-11-0268
(Garaufis, J.)
(Pollak, M.J.)

Plaintiff,

v.

Eric Holder, Attorney General

Defendant.

**DECLARATION OF ROBERT J.
VALLI, JR. IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

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ROBERT J. VALLI, JR., affirms, under penalty of perjury, pursuant to 28 U.S.C.

§ 1746 that:

1. I am an attorney admitted to practice law in the State of New York and the United States District Court for the Eastern District of New York and a member of the law firm, Valli Kane & Vagnini LLP, attorneys for Plaintiff Roderick Jenkins ("Plaintiff").
2. I submit this affirmation in Opposition to Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.
3. I have been involved in Plaintiff's claims of discrimination since 2006/2007.
4. Plaintiff filed three charges of discrimination including: a charge filed on December 27, 2007 (Charge 1); March 3, 2009 (Charge 2); and August 19, 2010 (Charge 3). Charge 3 contains the claims before the Court today.

5. Initial settlement discussions of Plaintiff's first two charges, commenced in or around the summer of 2009 – prior to issuance of the proposal for termination letter in November 2009.
6. During this time, the parties were also engaged in discovery regarding Jenkins' discrimination claims.
7. During the pendency of the first two EEO charges:
 - Plaintiff was issued the proposal for termination letter, and
 - Plaintiff was terminated.
8. Plaintiff believed that due to Defendant proceeding with his termination approximately four (4) years after his actions which were the basis for the majority of the charges, the filing of a third EEO claim would have been futile.
9. Despite these concerns, Plaintiff decided to file with both the EEO and the EEOC.
10. The first complaint was settled in or around January 19, 2011 and the case was dismissed in or around January 24, 2011.
11. The second complaint was resolved in August 2010 and dismissed on September 21, 2010.¹
12. Attached as Exhibit 1 is OIG Report 2006-003631.
13. Attached as Exhibit 2 is SIA Investigative Report.
14. Attached as Exhibit 3 is the Table of Penalties.

¹ Because the majority of the documentation regarding the futility argument relate to the confidential settlement of EEO claims 1 and 2, they have not been included in the Opposition to Defendant's motion. Plaintiff can provide the documentation to Your Honor and Defendant upon request.

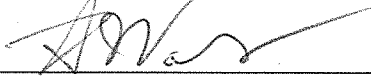
15. Attached as Exhibit 4 is Plaintiff's Response/Rebuttal to Proposal Letter dated December 2, 2009.
16. Attached as Exhibit 5 are the Minutes from the January 19, 2010 Meeting between Jenkins and the Warden.
17. Attached as Exhibit 6 are relevant excerpts from the Deposition of Roderick Jenkins ("Jenkins Dep.").
18. Attached as Exhibit 7 is a copy of the Amended Complaint.
19. Attached as Exhibit 8 is the Position Description for Correctional Program Specialist (Intelligence Research Specialist).
20. Attached as Exhibit 9 are relevant excerpts from the Deposition of Susan Hastings ("Hastings Dep.").
21. Attached as Exhibit 10 are copies of Jenkins' Awards.
22. Attached as Exhibit 11 are Jenkins' Work Related Injury Documents.
23. Attached as Exhibit 12 are relevant excerpts from the Deposition of Margaret Connors ("Connors Dep.").
24. Attached as Exhibit 13 are relevant portions from the Program Statement 1210.24, Office of Internal Affairs.
25. Attached as Exhibit 14 is the Assurance Letter.
26. Attached as Exhibit 15 is a Flowchart of BOP's Discipline System.
27. Attached as Exhibit 16 is the BOP-OIA Report 2008-0746.
28. Attached as Exhibit 17 is Jenkins Proposal Letter.

29. Attached as Exhibit 18 is Jenkins Termination Letter.
30. Attached as Exhibit 19 is Jenkins Form BP-S194.012.
31. Attached as Exhibit 20 are selected excerpts from the deposition of Elizabeth Marin-Rodriguez.
32. Attached as Exhibit 21 is the May 29, 2009 Email from Rodriguez to Connors.
33. Attached as Exhibit 22 is the Donald Davis Decision.
34. Attached as Exhibit 23 is an Email from Dowd.
35. Attached as Exhibit 24 are Swiderski Notes and Emails.
36. Attached as Exhibit 25 is Jenkins Adverse Action File.
37. Attached as Exhibit 26 is an Email from Rodriguez to Hastings dated January 6, 2010 with Talking Points.
38. Attached as Exhibit 27 is the Douglas Factor Worksheet.
39. Attached as Exhibit 28 are Disciplinary Letters.
40. Attached as Exhibit 29 is the Memo dated October 31, 2006.
41. Attached as Exhibit 30 is a letter from Dia Banks.

42. Attached as Exhibit 31 is a copy of the Change Notice to BOP Program Statement 3420.09.
43. Attached as Exhibit 32 are selected excerpts from the deposition of Lamine N'Diaye.

Dated: May 21, 2013
Garden City, New York

VALLI KANE & VAGNINI, LLP

By: 
Robert J. Valli, Jr. (RV 9995)
Attorneys for Plaintiff
600 Old Country Road, Suite 519
Garden City, New York 11530
(516) 203-7180